

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

In re:)
)
Brian Matthew Hobbs,) Case No. 20-12235-JDL
) Chapter 13
Debtor.)

**DEBTOR'S MOTION TO DISMISS WITHOUT PREJUDICE
AND BRIEF IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave., Oklahoma City, OK 73102 no later than fourteen (14) days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant's attorney and all others required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The 14-day period for response includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

Brian Matthew Hobbs, debtor in the above-captioned case ("Debtor"), by and through his attorney, Jason A. Sansone, pursuant to 11 U.S.C. § 1307(b) and Local Rule 1017-1(G), hereby requests the Court dismiss this Chapter 13. In support of this Motion, Debtor shows the Court as follows:

1. That on July 1, 2020, the Debtor filed a Chapter 13 Bankruptcy Petition seeking relief in the United States Bankruptcy Court for the Western District of Oklahoma ("Petition Date") [Doc. No. 1].
2. The Debtor has never previously sought bankruptcy protection. The above styled and numbered case is Debtor's only bankruptcy.

3. As of the date of filing this pleading, there is a pending Motion to Dismiss or Convert [Doc. No. 19], an Objection to Confirmation from creditor OSU Foundation Real Estate, LLC (“OSUF”) [Doc. No. 18], an Objection to Confirmation from the Oklahoma Tax Commission [Doc. No. 23], an Objection to Confirmation from creditor First National Bank & Trust Company of Weatherford [Doc. No. 28], an Objection to Confirmation from the Trustee, John Hardeman [Doc. No. 31], and an Objection to Debtor’s Exemptions [Doc. No. 35] (the “Contested Matters”).

4. In addition, Defendant’s prior counsel filed a Motion to Withdraw on August 25, 2020 [Doc. No. 37].

5. No party has filed a request for relief from the automatic stay. *See* 11 U.S.C. § 109(g)(2).

6. This case has not been previously converted and there are no existing binding arrangements or agreements between the Debtor and any creditors or any person or entity in connection with this Motion.

7. The Contested Matters are set for hearing on September 22, 2020.

8. The pending Motion to Dismiss or Convert filed by creditor OSU Foundation Real Estate [Doc. No. 19] is based, in part, upon the allegation that Debtor exceeds the debt limits contained in 11 U.S.C. § 109(e). After further review with newly retained undersigned counsel, Debtor concedes that he exceeds § 109(e) debt limits. The debtor is not eligible to continue this case under Chapter 13 because he exceeds the statutory limits. *In re Glazier*, 69 B.R. 666 at 669 (Bankr. W.D. Okla. 1987); *In re Mosley* (Bankr. S.D. Ill. 2018) (citing *In re Pratola*, 2018 WL 4181498 (N.D. Ill. Aug. 31, 2018)) (“a debtor who exceeds the statutory debt limits cannot obtain Chapter 13 relief, there is no basis for allowing the case to continue under

that chapter and accordingly, the court concluded that the case must be dismissed or converted”).

9. This court is without jurisdiction to hear the matter further because it is without power to grant relief. *In re Glazier*, 69 B.R. 666 at 669 (citing *In re Tashman*, 13 B.R. 549 (Bankr. D. Vt. 1981); *In re Kelsey*, 6 B.R. 114 (Bankr. S. D. Tex. 1980)). Thus, this case must be dismissed or converted. *Id.*

10. On request of the Debtor at any time, if the Chapter 13 case has not been converted under § 706, 1112, or 1208 of this title, the court shall dismiss the case. 11 U.S.C. § 1307(b).

11. Dismissal is available to the Debtor as of right. *Cf. In re Blaise*, 219 B.R. 946 (B.A.P. 10th Cir. 1998) (“[d]ismissal under section 1307(b) was not available to him as of right as this right evaporated under the earlier conversion”).

12. However, OSUF seeks an Order dismissing this matter with prejudice as to the Debtor’s ability to refile a bankruptcy petition for six (6) months [Doc. No. 15].

13. “Unless the court, for cause, orders otherwise, the dismissal of the case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in Section 109(g) of this title” (emphasis added). *In re Hancock* (Bankr. W.D. Okla. 2015) (citing 11 U.S.C. § 349(a)).

14. As previously identified by Debtor’s prior counsel in Debtor’s Objection to Motion to Dismiss [Doc. No. 29], OSUF fails to cite any case law in support of its request for dismissal with prejudice. OSUF does not attempt to define “good faith” or “bad faith”, even though those terms are not defined in the Bankruptcy Code. OSUF discusses § 1307 and § 1325,

but those sections of the Bankruptcy Code are not holding with regards to a debtor's right to file a subsequent petition. At no time does OSUF discuss § 349.


15. “The court has discretion to determine what type of conduct constitutes 'cause'... namely, whether (1) the debtor demonstrated bad faith or defiance, and (2) whether the debtor's conduct was abusive or prejudicial to creditors.” *In re Hancock* at 12 (Bankr. W.D. Okla. 2015) (citing *In re Norton*, 319 B.R. 671 (Bankr. D. Utah 2005)). “[A] section 349(a) dismissal must be premised on a debtor's exhibition of additional undesirable or egregious conduct that goes beyond the type of conduct that would justify a 'for cause' or bad faith dismissal under sections 1307 or 1325. Some courts have referred to this conduct as 'contumacious' or a 'pattern of evasion’”. *Id.*

16. This is Debtor's only bankruptcy, he has paid all court filing fees, there has not been any Orders to Show Cause or Motions for Contempt, and contrary to OSUF's allegations the Debtor filed the instant case due to a pending lawsuit from Pawnee Leasing Corp. *See* Doc. No. 29 at 8; Doc. No. 11 at 40. Further, Debtor believes that with the proper amendments to his Schedules and Statement of Financial Affairs, a Plan could be proposed which could be confirmed. However, it would be moot for Debtor to file an Amended Chapter 13 Plan in light of Debtor's inability under § 109(e) to remain in Chapter 13.

17. This case was filed as an “emergency petition”, effectively denying Debtor and his prior counsel the time and information to make a proper § 109(e) debt limit analysis. The Debtor, a lay person without any prior knowledge of bankruptcy law, was unaware of the limits proscribed in § 109(e). Debtor's statutory ineligibility to remain in Chapter 13, an issue he was not made aware of until after the filing of a petition, is not evidence of contumacious conduct or a pattern of evasion.

WHEREFORE, for the foregoing reasons, the Debtor requests the Court dismiss this Chapter 13 case without prejudice to refiling pursuant to the provisions of 11 U.S.C. Section 1307(b).

Respectfully Submitted,



Brian Matthew Hobbs
Debtor


SANSONE HOWELL PLLC

/s/ Jason A. Sansone

Jason A. Sansone, OBA No. 30913
Sansone Howell PLLC
4600 SE 29th St., Suite 500
Del City, Oklahoma 73115
Direct Telephone: (405) 347-7231
Direct Facsimile: (405) 347-7232
Email: JSansone@SansoneHowell.com
PROPOSED COUNSEL FOR DEBTOR

AFFIDAVIT OF DEBTOR BRIAN MATTHEW HOBBS

In compliance with Local Rule 1017-1(G), I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Brian Matthew Hobbs
Debtor

CERTIFICATE OF MAILING/ELECTRONIC TRANSMISSION

I, Jason A. Sansone, hereby certify that on September 4, 2020, a true and correct copy of the above Motion was electronically served using the CM/ECF system to the United States Trustee, John Hardeman, Chapter 13 Trustee, and served by U.S. Mail, first class, postage prepaid on the attached mailing matrix.

/s/ Jason A. Sansone

Jason A. Sansone, OBA 30913

Label Matrix for local noticing
1087-5
Case 20-12235
Western District of Oklahoma
Oklahoma City
Fri Sep 4 13:26:35 CDT 2020

OSU Foundation Real Estate, LLC
400 S. Monroe
Stillwater, OK 74074-3322

Oklahoma Tax Commission
100 N. Broadway Ave, Ste. 1500
Oklahoma City, ok 73102-8601

RCB Bank
c/o Karen Carden Walsh, Esquire
Riggs, Abney
502 West 6th Street
Tulsa, OK 74119-1016

Synchrony Bank
c/o PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

USBC Western District of Oklahoma
215 Dean A. McGee
Oklahoma City, OK 73102-3426

24 Capital
31-10 37th Ave
Long Island City NY 11101-2128

ABCO Rents
2033 E 11th St
Tulsa OK 74104-3623

Albright Rusher & Hardcastle
2600 Bank of America Center
15 W 6th St
Tulsa OK 74119-5434

American Express
PO Box 650448
Dallas TX 75265-0448

American Express National Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern PA 19355-0701

Arvest
Security Bankcard Center
PO Box 6319
Norman OK 73070-6319

Arvest Bank
1188 N. Salem Rd. Suite 12
Fayetteville, AR 72704-8804

(p)ARVEST BANK
P O BOX 11110
FORT SMITH AR 72917-1110

Ascentium Capital LLC
23970 Highway 59 North
Kingwood TX 77339-1535

(p)BANK OF AMERICA
PO BOX 982238
EL PASO TX 79998-2238

Bank Of America, N.a.
Po Box 45144
Jacksonville FL 32232-5144

Bank of America, N.A.
P O Box 982284
El Paso, TX 79998-2284

Bank of America, N.A.
PO BOX 31785
Tampa, FL 33631-3785

Best Buy/cbna
Po Box 6497
Sioux Falls SD 57117-6497

Bloom/dsnb
Po Box 8218
Mason OH 45040-8218

Blue Bridge Financial
201 Buffalo
Buffalo NY 14203

Capital One
PO Box 5253
Carol Stream IL 60197-5253

Capital One
POB 30285
Salt Lake City UT 84130-0285

Capital One Bank (USA), N.A.
4515 N Santa Fe Ave
Oklahoma City, OK 73118-7901

Capital One Bank Usa N
Po Box 30281
Salt Lake City UT 84130-0281

Capital One N.A.
4515 N Santa Fe Ave
Oklahoma City, OK 73118-7901

Citibank, N.A.
5800 S Corporate Pl
Sioux Falls, SD 57108-5027

Citicards Cbna
Po Box 6217
Sioux Falls SD 57117-6217

Credit One Bank Na
Po Box 98872
Las Vegas NV 89193-8872

DSA Factors
3126 N Lincoln Ave
POB 577520
Chicago IL 60657-7335

Department Stores National Bank
c/o Quantum3 Group LLC
PO Box 657
Kirkland, WA 98083-0657

Ebay/Mastercard
PO Box 960080
Orlando FL 32896-0080

Emerald Hills Capital Management
Outbound Capital
355 S Teller #200
Denver CO 80226-7391

Estate of Jack Vassar
c/o Atty Tim Green, PC
213 East Oklahoma Ave.
Guthrie OK 73044-3244

Expansion Capital
5801 S Corporate Place
Sioux Falls SD 57108-5027

Financial Pacific Leasing Inc
POB 4568
Federal Way WA 98063-4568

First National Bank & Trust Co Weatherfo
4611 W 6th St
Stillwater OK 74074-1551

First National Bank & Trust Company, Weather
4611 W. 6th Ave.
Stillwater, OK 74074-1551

Fundamental Capital LLC
Sparks Funding
301 Mission St
San Francisco CA 94105-2243

Green Capital Funding LLC
116 Nassau St Ste 804
New York NY 10038-2481

Henry Veasly III
Aubrey Thrasher Law Firm
12 Powder Springs Street
Ste 240
Marietta GA 30064-7205

I C System
Po Box 64378
Saint Paul MN 55164-0378

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

JPMorgan Chase Bank, N.A.
s/b/m/t Chase Bank USA, N.A.
c/o Robertson, Anschutz & Schneid, P.L.
6409 Congress Avenue, Suite 100
Boca Raton, FL 33487-2853

Jared C. Smith
RCB Bank
P.O. Box 189
Claremore, OK 74018-0189

John Special
4811 Deer Trail
Stillwater OK 74074

(p)JPMORGAN CHASE BANK N A
BANKRUPTCY MAIL INTAKE TEAM
700 KANSAS LANE FLOOR 01
MONROE LA 71203-4774

K&K Interiors
2230 Superior St
Sandusky OH 44870-1843

Kabbage
925 B Peachtree St NE
Ste 1688
Atlanta GA 30309-3918

LVNV Funding, LLC
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

Loanbuilder
3505 Silverside Rd
Wilmington DE 19810-4905

MM Funding Group
114-116 Ditmas Ave
Brooklyn NY 11218-4902

Macys
PO Box 8058
Mason OH 45040-8058

Melrose International
1400 N 30th St
Ste 22
POB 3441
Quincy IL 62305-3441

Merrick Bank Corp
Po Box 9201
Old Bethpage NY 11804-9001

National Funding Inc.
9820 Towne Centre Dr
Ste 200
San Diego CA 92121-1944

OSU Foundation Real Estate
c/o Gungoll, Jackson, Box & Devoll, PC
101 Park Ave, Ste 1400
Oklahoma City OK 73102-7216

OSU Foundation Real Estate, LLC
Attn: Robyn Baker & Scott Cordell
400 S. Monroe
Stillwater, OK 74074-3322

(p)OKLAHOMA TAX COMMISSION
GENERAL COUNSEL S OFFICE
100 N BROADWAY AVE SUITE 1500
OKLAHOMA CITY OK 73102-8601

On Deck Capital
1400 Broadway
New York NY 10018-5300

On Deck Capital, Inc.
101 West Colfax Ave., 10th Floor
Denver, CO 80202-5167

PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

(p)PAWNEE LEASING CORPORATION ATTN SANDI CAR
3801 AUTOMATION WAY
STE 207
FORT COLLINS CO 80525-5735

Pawnee Leasing Corporation
c/o Albright, Rusher & Hardcastle
2600 Bank of America Center
15 West Sixth Street
Tulsa OK 74119-5434

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

RCB Bank
Karen Carden Walsh
Riggs, Abney, 502 West 6th Street
Tulsa OK 74119-1016

RCB Bank Stillwater
324 S Duck
Stillwater OK 74074-3218

Raz Imports
1020 Eden Rd
Arlington TX 76001-7885

Telecom Self-reported
Po Box 4500
Allen TX 75013-1311

The Florist Federal Credit Union
404 N Kentucky Ave
Roswell NM 88201-4719

US Attorney's Office/Oklahoma
210 Park Ave., #400
Oklahoma City OK 73102-5628

United States Trustee
United States Trustee
215 Dean A. McGee Ave., 4th Floor
Oklahoma City, OK 73102-3479

Utility Self-reported
Po Box 4500
Allen TX 75013-1311

Brian Matthew Hobbs
6 Champion Place
Stillwater, OK 74074-1065

John T. Hardeman
PO Box 1948
Oklahoma City, OK 73101-1948

Mike J Rose
4101 Perimeter Center Drive
Suite 120
Oklahoma City, OK 73112-2309

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Arvest Bank
PO Box 399
Lowell AR 72745

Bank Of America
Po Box 982238
El Paso TX 79998

(d)Bank of America
PO Box 982238
El Paso TX 79998-2238

Internal Revenue Service
PO Box 745
District Director
Chicago IL 60690

Jpmcb Card
Po Box 15369
Wilmington DE 19850

Oklahoma Tax Commission
Attn: Bankruptcy Division
120 N Robinson Ste 2000
Oklahoma City OK 73102

Pawnee Leasing Corp
3801 Automation Way
Ste 207
Fort Collins CO 80525

Portfolio Recovery Associates, LLC
POB 41067
Norfolk VA 23541

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)First National Bank & Trust Co. Weatherfor
4611 W. 6th Street
Stillwater

(u)Gage Inc. LLP
POB 223
IA 52434

(u)John Special

| | |
|---------------------|----|
| End of Label Matrix | |
| Mailable recipients | 76 |
| Bypassed recipients | 3 |
| Total | 79 |